



## CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

### ZHANG JIANZHONG CASE UPDATE

In May 2003, the Commission released a paper entitled “Defense Lawyers and Defendants: Zhang Jianzhong and the Criminal Prosecution of Defense Lawyers in China.” In December 2003, Zhang Jianzhong was found guilty of assisting in the fabrication of evidence. The Commission continues to be concerned that the Chinese government’s handling of Zhang’s case will discourage lawyers from representing criminal defendants and consequently have a negative impact on the protection of human rights in China. An update follows below on developments in Zhang’s case and the implications of his conviction.

#### *Conviction and Appeal*

On December 9, the Beijing No. 1 Intermediate People’s Court found that defense lawyer Zhang Jianzhong assisted with the fabrication of evidence in the Huo Haiyin corruption case, a violation of Article 307, clause 2 of the PRC Criminal Code.<sup>1</sup> On the basis of this determination, the court sentenced Zhang to two years of imprisonment, one year less than the maximum sentence permitted under Article 307. According to standard practice, Zhang was given credit for time served in detention since May 2002, and he thus is scheduled to be released in May 2004.

The court took nearly eleven months to decide the case, a violation of the PRC Criminal Procedure Law, which provides a maximum of 2 1/2 months for courts to reach a verdict.<sup>2</sup> The court’s decision to issue a verdict before the end of the year was likely the result of a recent government campaign to clear cases of unlawful “extended detention,” which the government has identified as a major source of public anger with the judicial system.<sup>3</sup>

In its lengthy judgment, the court found that Zhang conspired with a bank official named Huo Haiyin to alter the date on a power of attorney that Huo had signed to a date before Huo’s detention.<sup>4</sup> The power of attorney authorized Zhang to transfer the real estate assets of a company that had received illegal loans from Huo’s bank. According to the court’s findings, Zhang’s purpose in facilitating the asset transfers was to create the appearance that the illegal loans would be repaid and thus lighten Huo’s criminal responsibility. In fact, the loans were never repaid and the bank suffered a significant

loss. The court concluded that Zhang intentionally concealed facts about these transactions, impairing the investigation and prosecution of the Huo Haiyin case.

In response to most of the defenses raised on Zhang's behalf, the court merely confirmed conclusions reached by the prosecution, but did not provide clear legal reasoning to support its rejection of the defense's arguments. For example, investigators do not appear to have conducted a handwriting analysis to determine who backdated the power of attorney, and the court does not explain how mere use of a backdated document amounts to assisting in its fabrication. In addition, Zhang's defense attorneys presented evidence suggesting that the transactions at issue had all been sanctioned by government authorities in Beijing and Dalian. Although such evidence seems relevant to a determination of Zhang's subjective intent, the court simply dismissed it without further explanation as "not directly connected" to the charge.

Zhang appealed to the Beijing High People's Court for a review of the conviction within the ten-day period permitted by law. Zhang's lawyers reportedly raised several issues on appeal.<sup>5</sup> First, they asked the appeals court to conduct a handwriting analysis to confirm the identity of the individual who backdated the power of attorney and then to undertake a more thorough investigation into the charge that Zhang colluded with Huo Haiyin and others. Second, they disputed the Beijing Intermediate Court's finding that Zhang's intent was to create only an appearance that the bank's loans had been recovered. They argued that the asset transfer had in fact made it more likely that the bank loans would be repaid and that therefore Zhang had acted in good faith. The Beijing High People's Court did not accept these arguments, and on January 7 it upheld Zhang's conviction.<sup>6</sup>

### *Reaction of the Legal Community*

Legal observers greeted news of Zhang's conviction with dismay. Before the judgment, over 600 lawyers delivered a petition to the Supreme People's Court and the Supreme People's Procuratorate calling for Zhang's release,<sup>7</sup> and both the All China Lawyers Association and the Beijing Lawyers Association tracked the case closely.<sup>8</sup> In addition, six leading criminal law scholars who examined the case filed a brief with the Beijing Intermediate People's Court challenging the basis for the charges against Zhang.<sup>9</sup> While Zhang is scheduled to be released in two months, he has been in detention for nearly two years and, with a conviction on his record, his legal career is ruined.<sup>10</sup> According to one Beijing lawyer interviewed after the verdict, the result was viewed as a setback and would discourage lawyers from taking criminal defense cases.

### *Implications*

As such reactions suggest, the government's handling of Zhang Jianzhong's case is unlikely to quell doubts about the fairness of Zhang's prosecution. The Commission argued in its May 2003 topic paper that Chinese authorities could respond to public concerns about Zhang's prosecution by carefully adhering to China's own Criminal

Procedure Law and by providing clear reasoning to address the legal arguments raised in his defense. Unfortunately, Chinese authorities appear to have fallen short in both of these areas.<sup>11</sup> Defense lawyers should not be above the law, but Chinese authorities need to do more to dispel the perception among lawyers that criminal defense work is a high-risk activity, which has contributed to a steady drop since 1996 in the percentage of Chinese criminal suspects represented by defense counsel.<sup>12</sup> The Commission continues to be concerned that the handling of Zhang's case and other cases involving lawyers will only strengthen this perception and in turn have a negative impact on the protection of basic rights in China.

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<sup>1</sup> Criminal Judgment of the Beijing No. 1 Intermediate People's Court in the Case of Zhang Jianzhong, December 9, 2003 (on file with the CECC).

<sup>2</sup> PRC Criminal Procedure Law, Article 168.

<sup>3</sup> In an attempt to assuage public anger stemming from several high-profile cases of law enforcement abuse last year, the government has been engaged in a general campaign to improve the image of law enforcement and judicial organs. As part of this campaign, police, prosecutors, and the courts have been ordered to clear such cases and establish systems to prevent extended detention in the future. Supreme People's Court, "Notice on Issues Related to Clearing Cases of Extended Detention," July 29, 2003; Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, "Notice on Strictly Enforcing the Criminal Procedure Law and Rectifying Extended Detention in Practice," November 12, 2003.

<sup>4</sup> Criminal Judgment of the Beijing No. 1 Intermediate People's Court in the Case of Zhang Jianzhong, December 9, 2003 (on file with the CECC).

<sup>5</sup> "Zhang Jianzhong Dissatisfied with the Court of First Instance and Appeals," *Caijing*, January 2004.

<sup>6</sup> "Zhang Jianzhong, Former Defense Lawyer for Cheng Kejie Sentenced to Two Years for Fabrication of Evidence," *Xinhua*, January 14, 2004.

<sup>7</sup> David Fang, "Beijing Lawyer's Two-year Prison Sentence is Greeted with Dismay," *South China Morning Post*, December 11, 2003.

<sup>8</sup> CECC Interview.

<sup>9</sup> Li Hongbing, "An Investigation of the Case of Zhang Jianzhong," *21<sup>st</sup> Century Business Herald*, March 12, 2003.

<sup>10</sup> Under Article 46 of the PRC Lawyers Law, a lawyer's practice certificate must be revoked if the lawyer is subject to criminal punishment for an intentional crime.

<sup>11</sup> In addition to the length of time it took the court to reach a verdict, Zhang's case was tainted by at least two other procedural violations in the investigation and trial phases. When Zhang was arrested in May 2002, he was held incommunicado for almost a month in violation of Article 64 of the Criminal Procedure Law. Moreover, access to his trial was restricted, despite legal provisions that require trials such as Zhang's to be open. These procedural violations infringed on Zhang's legal rights as a defendant and fueled concerns that Zhang was prosecuted for political reasons.

<sup>12</sup> See Congressional-Executive Commission on China, "Defense Lawyers and Defendants: Zhang Jianzhong and the Criminal Prosecution of Defense Lawyers in China," May 2003.